

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDRE L. HART,)	
)	
Plaintiff(s),)	No. C06-2519 CW (BZ)
)	
v.)	
)	
J. CELAYA, et al.,)	ORDER GRANTING PLAINTIFF'S
)	MOTION TO COMPEL IN PART
Defendant(s).)	
)	
_____)	

Having reviewed plaintiff's motion to compel discovery filed March 22, 2007, a Joint Stipulation and Order to Withdraw Certain Document Requests from Plaintiff's Motion to Compel entered July 30, 2007 and defendants' Court Ordered Opposition to Plaintiff's Motion to Compel,¹ the court finds no need for a hearing. In my Order dated September 21, 2007 I specifically asked plaintiff to explain, among other things, why a review of his medical file and central file could not solve some of these discovery disputes. He did not file the required explanation. **IT IS HEREBY ORDERED** that plaintiff's

¹ The court has never received any reply from plaintiff. One was due October 17, 2007.

1 motion to compel further production is **GRANTED** and **DENIED** as
2 follows:

3 1. **GRANTED** as to **Request No. 1** to the extent that
4 defendants are **ORDERED** to produce by **November 16, 2007** for *in*
5 camera review any complaints claiming that any defendant used
6 improper or excessive force from January 1, 2001 to January 1,
7 2006.

8 2. **DENIED** as to **Requests No. 5, 10 and 11**. Defendants'
9 responses appear adequate.

10 3. With respect to **Request No. 13**, by **November 16, 2007**
11 defendants shall make available for plaintiff's review his
12 medical file and his central file.

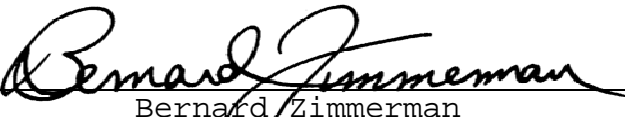
13 4. With respect to **Request No. 14**, the court interprets
14 the defendants' response as asserting that they have produced
15 all the requested documents in connection with the summary
16 judgment motion. As so construed, the motion to compel is
17 **DENIED** as to this request.

18 6. **DENIED** as to **Request No. 15** which is overbroad.

19 7. With respect to **Requests No. 2, 3, 6 and 7**,
20 defendants have properly invoked the official information
21 privilege. See Young v. Hernandez, No. 05-CV-2375 W(CAB), 2007
22 WL 935594, at *2 (S.D. Cal. March 26, 2007)(citing Kelly v.
23 City of San Jose, 114 F.R.D. 653, 669 (N.D. Cal. 1987) (To
24 assert an official information privilege, the Department must
25 file an objection that specifically states the harm that could
26 result from releasing the requested materials, accompanied by
27 a declaration from a responsible official with personal
28 knowledge of the principal matters to be attested to in the

1 affidavit.)) Once the threshold requirement has been met, the
2 court will order an *in camera* review of the material and
3 balance each party's interests, moderately pre-weighted in
4 favor of disclosure. Id. In performing this balancing test,
5 courts have found that a tightly drawn protective order
6 limiting document access to the litigant's attorneys or
7 experts can permit the court to compel production of the
8 documents without jeopardizing law enforcement efforts or
9 revealing the documents to the public. See Kelly, 114 F.R.D.
10 at 666. Here, however, defendants are aptly concerned that a
11 protective order would be wholly inadequate. (Decl. of Lt.
12 William Muniz in Supp. of Defs.' Resp. To Pl.'s Req. For
13 Produc. Of Docs. of 3/17/07, at 3). Therefore, as to these
14 Requests, defendants shall make the following documents
15 available by **November 16, 2007** for *in camera* review:
16 Operational Procedures 8 and 14, Use of Force Book, Resource
17 Supplement Number 8, Use of Force Critique for incident number
18 SVP-FC7-05-03-0136, Modification Order for inmate appeal log
19 number SVSP-D-05-01465 with corresponding memorandum, and the
20 Confidential Supplement to Appeal log number SVSP-D-05-01465.
21 I will evaluate the documents and issue a further order.

22 Dated: November 1, 2007

23
24 
25 Bernard Zimmerman
United States Magistrate Judge

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